



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 22, 2016

Mr. Matthew L. Grove  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, Third Floor  
Richmond, Texas 77469

OR2016-14104

Dear Mr. Grove:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 615144.

The Fort Bend County Attorney's Office, Sheriff's Office, Fire Marshal's Office and Constable Precincts 1-4 (collectively, the "county") received a request for all documents related to services, technology and/or equipment acquired by the county from named vendors during a specified time period. You indicate you do not possess information responsive to a portion of the request.<sup>1</sup> Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Vigilant Video, Inc. d/b/a Vigilant Solutions ("Vigilant"). Accordingly, you state you notified the third party of the request for information and of Vigilant's right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2(1990), 452 at 3 (1986), 362 at 2 (1983).

disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Vigilant explaining why the submitted information should not be released. Therefore, we have no basis to conclude Vigilant has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the county may not withhold any portion of the submitted information on the basis of any proprietary interest Vigilant may have in the information.

We note some of the information may be subject to section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12. If the individual at issue is a currently licensed peace officer as defined by article 2.12, then the county must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the county may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. Conversely, if the individual at issue is not currently a licensed police officer as defined by article 2.12, the information at issue may not be withheld under section 552.117(a)(2) of the Government Code.

If the individual at issue is not currently a licensed peace officer, then the personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. Whether a particular piece of information is protected by

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The county may only withhold the information at issue under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individual at issue made a timely election under section 552.024, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the county may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. Conversely, if the individual at issue did not make a timely election under section 552.024, the information may not be withheld under section 552.117(a)(1) of the Government Code.

Section 552.1175 protects the home address, home telephone number, date of birth, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Some of the submitted information pertains to a peace officer not employed by the county. Thus, to the extent the individual to whom the marked information pertains elects to restrict access to the information in accordance with section 552.1175(b), and the cellular telephone service is not paid for by a governmental body, the county must withhold the information we marked under section 552.1175. If the individual whose information we marked did not elect to restrict access, or the cellular telephone service is paid for by a governmental body, the county may not withhold this information under section 552.1175.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Portions of the submitted information contain license plate information and photographs of license plates. However, we are unable to determine whether this information constitutes actual motor vehicle record information for purposes of section 552.130 or whether it is fictitious motor vehicle record information created as a sample for purposes of responding to the request for proposals. Thus, to the extent the information at issue constitutes actual motor vehicle record information, the county must withhold the license plate information and photographs of license plates under section 552.130 of the Government Code. To the extent the information at issue consists of fictitious motor vehicle record information, it may not be withheld under section 552.130 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body

must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, if the individual at issue is a currently licensed peace officer, then the county must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the county may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. If the individual at issue is not a currently licensed peace officer and if the individual at issue made a timely election under section 552.024, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the county may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. To the extent the individual to whom the marked information pertains elects to restrict access to the information in accordance with section 552.1175(b), and the cellular telephone service is not paid for by a governmental body, the county must withhold the information we marked under section 552.1175. To the extent the information at issue constitutes actual motor vehicle record information, the county must withhold the license plate information and photographs of license plates under section 552.130 of the Government Code. The county must release the remaining information, but may only release any copyrighted information in accordance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, reading "Ashley Crutchfield".

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/dls

Ref: ID# 615144

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)